

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Jonathan Barbour	Team: Team # 6	CCRB Case #: 200002151	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Thursday, 03/23/2000 10:00 PM	Location of Incident: Junction Blvd. & 34th Street	Precinct: 115	18 Mo. SOL 9/23/2001	EO SOL 9/23/2001	
Date/Time CV Reported Tue, 04/04/2000 3:55 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Tue, 04/04/2000 3:55 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. An Officer			
2. POM Sean Finley	07561	917626	PBBX SC
3. POM Sean Downes	29467	918975	115 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Timothy Erwig	29677	919006	115 PCT
2. POM Daniel Miller	27429	919418	115 PCT
3. SGT Kevin Roske	01863	892612	115 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Sean Finley	Abuse: Officer Sean Finley stopped and questioned § 87(2)(b)	
B.POM Sean Finley	Force: Officer Sean Finley used physical force against § 87(2)(b)	
C.POM Sean Downes	Force: Officer Sean Downes used physical force against § 87(2)(b)	
D.POM Daniel Miller	Force: Officer Daniel Miller used physical force against § 87(2)(b)	
E. An Officer	Force: An Officer used pepper spray against § 87(2)(b)	

Synopsis

§ 87(2)(b) was arrested at 11:55 PM on March 23, 2000 after § 87(2)(b) identified him as a perpetrator in a robbery. Officers from the Anti-Crime Unit of the 115th Pct arrested him, but not until they were able to overcome § 87(2)(b)'s resistance. § 87(2)(b) alleged that the officers used physical force as well as pepper spray when effecting the arrest. § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

Summary of Complaint

On March 23, 2000, § 87(2)(b) spent the evening with a friend at § 87(2)(b). He left at about 10 or 11 PM and walked towards his apartment at § 87(2)(b). When he was about halfway home, three uniformed white male police officers got out of a black sedan and called him over to their car. One of the officers had arrested § 87(2)(b) a year earlier for assault. § 87(2)(b) immediately recognized him and knew him by his first name, Sean.

§ 87(2)(b) walked to the officers. When he got to them, the tallest of the three officers grabbed him from the side and shoved him chest first against the car. § 87(2)(b) asked several times why he was being arrested. Sean replied, § 87(2)(b) "Give it up." § 87(2)(b) said that he did not want to be handcuffed, so he held his arms stiffly out to his sides. He estimated that it took the officers about seven minutes to get the cuffs on him. Once he was in handcuffs, he was thrown to the ground face first. He was then turned on his side and one of the officers maced him. The tall officer then kneeled on his neck and ribs. § 87(2)(b) told the officer he could not breathe, but the officer only told him to shut up.

§ 87(2)(b) said that the officers later told him he was arrested for stealing \$250 and a cellular phone, but that he did not know anything about it.

Results of Investigation

§ 87(2)(b)'s girlfriend, § 87(2)(b) filed this complaint on April 4, 2000. Because § 87(2)(b) was not present for the incident and only heard about it from § 87(2)(b) she was not interviewed as a witness in this case. § 87(2)(b) was interviewed in the Queens House of Detention on May 4, 2000.

According to § 87(2)(b)'s arrest paperwork, he was accused of stealing \$250 and an Erickson Cell Phone from § 87(2)(b). § 87(2)(b) was charged with § 87(2)(b). Two other perpetrators were not apprehended. Officer Sean Finley of the 115th Pct arrested § 87(2)(b) and according to the 115 Pct Roll Call, Officer Finley was assigned to the Anti-Crime Team with Officer Miller, Officer Downes, Officer Erwig, Officer Erdman, and Sgt Roske.

Several contact attempts were made to reach the victim of the robbery, § 87(2)(b). § 87(2)(b) was finally reached on August 14, 2000 while he was in the process of packing his things to move back to his home in Ecuador. He said that he was walking in the vicinity of Junction Blvd and 97th Street when three people attacked him and stole \$250 and his cellular phone. § 87(2)(b) told the police about the incident and gave them detailed descriptions of the attackers. § 87(2)(b) said that he was with the police officers when they arrested one of the men outside a grocery store. He said that the man tried to run away from the officers and that the man resisted the officers by kicking and pulling away. The officers had to use some force to restrain the man, but § 87(2)(b) was unable to precisely describe the actions the officers took. He said that the man was cuffed when he was face down on the ground after a five-minute struggle with about four officers. § 87(2)(b) did not know if the officers hit the man after he was cuffed. § 87(2)(b) did not mention the use of pepper spray or any other objects and said he was watching from the back of the RMP. He also said that he positively identified the man as one of the attackers.

The anti-crime officers were interviewed between August 15 and October 26, 2000 (Note: There was a delay in Officer Finley's interview for several reasons. He was transferred to the Street Crimes Unit and was not initially notified. He also was away for several weeks on his honeymoon). Officer Miller, Officer Finley, and Officer Downes explained that they were at the stationhouse doing paperwork when a

call came in from a concerned citizen regarding a robbery. The officers got in an unmarked RMP and went to the location to meet with the victim of the robbery. The victim told them in broken English and with the help of other civilians that he had been robbed of a cell phone and some amount of money. He also provided descriptions of the perpetrators. Officer Finley said that the only description he recalled was that of a light-skinned Hispanic male wearing a black and yellow jacket. The officers took the victim with them in their RMP and began to canvass the area for the perpetrators.

Officer Finley explained that they were stopped somewhere near Junction Blvd and 34th Street when he saw a man in a black and yellow jacket a block or so ahead. The other officers and the victim were outside the car at the time, so Officer Finley told them to get back in. Officer Finley then drove in the direction of the man in the black and yellow jacket. As he approached, the victim began to say, "That's him. That's the man that robbed me." Officer Finley asked him if he was sure and the victim said he was. Officer Finley, Officer Miller, and Officer Downes got out of the car and approached the man. They asked him to step over towards their RMP. The man complied. By now, Officer Finley had recognized the man as a robbery recidivist in the precinct named § 87(2)(b). § 87(2)(b) asked Mr. Finley, "What's up?" Officer Finley asked him if he had been in any fights that day. At this point, the officers all explained that the victim got out of the car and said over and over, "That's him. That's the guy that robbed me."

Officer Finley asked § 87(2)(b) to put his hands behind his back. Officer Downes and Officer Finley explained that § 87(2)(b) immediately tried to run. He did not get away, though, because the officers grabbed him. Officer Downes and Officer Finley said that § 87(2)(b) then began to move his arms around so the officers couldn't hold on to them, even as they pushed him against the car. Officer Finley said that § 87(2)(b) then held his arms out stiffly to his sides, still trying to prevent the officers from placing his hands in cuffs. § 87(2)(b) was eventually cuffed and was also eventually placed face down on the ground. Officer Downes and Officer Finley both did not remember if § 87(2)(b) was cuffed standing and then brought to the ground or if he was brought to the ground and cuffed there. Officer Finley explained, however, that even when he was cuffed and on the ground, § 87(2)(b) still tried to squirm away from the officers. Officer Finley and Officer Downes denied kneeling on § 87(2)(b) and both said that pepper spray was not used.

Officer Miller § 87(2)(g) said the man was not really resisting. The only force he described was the necessity to move the man's hands behind his back. Officer Miller also said that the man was on his feet the entire time.

Officer Finley, Officer Downes, and Officer Miller said that once the man was in handcuffs, they called for their supervisor, Sgt Roske, to come and verify the arrest. Sgt Roske and Officer Erwig came in an unmarked van within a few minutes. Officer Erwig said that he sat with the prisoner in the van while Sgt Roske talked to the officers. Officer Erwig did not remember anything that was said, but he did not notice any injuries and he did not appear to have been pepper sprayed. Sgt Roske agreed that the man was not injured or pepper sprayed.

Conclusions and Recommendations

§ 87(2)(g)

Allegation A: Officer Sean Finley stopped and questioned § 87(2)(b)

§ 87(2)(b) said that he positively identified § 87(2)(b) to the police officers as a person who had just robbed him. § 87(2)(g)

Allegation B: Officer Sean Finley used physical force against § 87(2)(b)

Allegation C: Officer Sean Downes used physical force against § 87(2)(b)

Allegation D: Officer Daniel Miller used physical force against § 87(2)(b)

§ 87(2)(g)

According to Patrol Guide Procedure 104-1, the officers should have used only the minimum amount of force necessary to overcome resistance and achieve their goal, i.e. to arrest § 87(2)(b) § 87(2)(g)

§ 87(2)(b) did not sustain any injuries and did not need medical treatment. § 87(2)(g)

Allegation E: An Officer used pepper spray against § 87(2)(b)

Interim Order 9 of 1998 states that “Oleoresin Capsicum pepper spray may be used when a member reasonably believes it is necessary to effect the arrest of a resisting suspect.” It further states that “O.C. pepper spray may be used in arrest or custodial restraint situations where physical presence and/or verbal commands have not been, or would not be, effective in overcoming physical resistance.” § 87(2)(g)

Investigator: Jonathan Barbour

Date:

Supervisor: Amanda Zafian

Date:

Reviewed by: John Cipriano

Date:

Reviewed by:

Date: